COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Request for Comments on the	)	
Procurement of Default Service Power	)	D.T.E. 04-115
Supply for Residential and Small	)	
Commercial and Industrial Customers	)	

REPLY COMMENTS OF DIRECT ENERGY SERVICES, LLC

Direct Energy Service, LLC ("Direct Energy") appreciates being given the opportunity to reply to the comments submitted in response to the Department's Request for Comments on the important issue of default service procurement. Direct Energy has noted with interest the overwhelming response urging the Department to "stay the course" with regards to procurement of Default Service (DS), specifically with regards to the length of DS contracts, the number of solicitations per year, whether a "statewide RFP" should be issued, or whether the current RFP process should be changed to a descending clock auction process. All such prospective changes were rejected by the vast majority of commenters, including Direct Energy.

Moreover, commenters such as the Division of Energy Resources ("DOER") also rejected any suggestion that the risk premium associated with longer term contracts be mitigated through customer switching restrictions. Direct Energy wholeheartedly agrees with DOER's comments on such a proposal:

> If DS procurements were required for terms longer than one year, some might argue that the premium associated with migration risk over a longer term would justify restraints on customer migration (e.g. a limiting the percentage of DS customers that would be allowed to migrate to competitive supply during any given year or contract term). Since the advent of restructuring, MA has had a policy that customers on regulated forms of generation service should face as few restraints as possible on their ability to move competitive suppliers. While large

> customers have proven capable of gaming the DS offering to their advantage through strategically timing going on and off DS, residential customers are much less likely to have the ability and opportunity to capture such advantages. No restraints on customer movement to competitive suppliers should be imposed merely to offset the inherent risk premiums that go along with requiring longer-term DS contracts. (DOER Initial Comments at 12)

Despite this widespread agreement among the commenters with respect to the questions posed by the Department, it is important to note that the majority of the commenters *assumed that no changes to the structure of retail commodity service in Massachusetts other than those suggested by the Department's questions are possible.* The comments of Direct Energy, Strategic Energy, Massachusetts Electric Company, and Dominion Retail demonstrated, however, that the Department could consider market changes *other than* those strictly related to the length and frequency of DS procurement or the "auction/RFP debate." As clearly argued in the comments of those companies, these other changes are what is *really* needed to repair the serious flaws in the smaller customer retail electric market in Massachusetts.

Strategic Energy also appropriately noted that competitive suppliers not only have identified the flaws in this market many times during the last seven years but also have proposed various solutions to those flaws. These proposals have not been implemented and the result is that no competitors are making offers to serve residential and small commercial customers. Strategic Energy's comments once again summarized these flaws and the clear solutions:

> While the Department's inquiry in the present proceeding is into the term and structure of wholesale procurement for default pricing for mass-market customers, Strategic believes it is appropriate to restate its vision for an end-state to place its replies in proper context. Fundamentally, Strategic remains committed to same vision articulated by the "Competitive Suppliers" in 2002:

> First, default service prices must include all of the costs of providing default service. This includes both all generation costs and all retailing costs. Providing competitive electric service to customers involves more than wholesale "generation." Competitive service involves all aspects of retail electric supply. Hiding some of these costs in the distribution charge is misleading and may lead customers to make the wrong choices. Competition has invariably failed in jurisdictions that have hidden supply and retailing costs in distribution charges. Full implementation of this principle will require unbundling, and removal of all retail electric supply costs from distribution rates.
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> Second, the utility must exit the role of default service provider. Competition will not fully develop, and may not develop at all for small customers, as long as the utility remains in this role. Instead, default service should be provided by competitive retail suppliers. Implementation of this principle will require a retail auction or similar mechanism to move customers to competitive default service supplier.
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> Third, in the end-state, billing should be performed by competitive retail suppliers rather than utilities. The bill is the primary means of communication with small customers; it should be provided by the competitive firm, not the monopoly. In light of current statutory limitations, the utilities should continue to perform billing for the short term. However, they should do so as a service to suppliers, including default providers, and should charge for that service pursuant to Department-approved tariffs.[1]

Direct Energy's own proposals in this docket are similar to much of what was described by the competitive suppliers in 2002. There is no need to restate solutions that have been before the Department for many years. What is needed now is a commitment by the Department to work to the full extent of its authority to effect, in conjunction with the Legislature, if necessary, the change required to fix this market so that it begins providing small customers with the benefits promised to them more than seven years ago.

The comments in this docket revealed a surprising level of agreement on another matter, namely, that the New York Public Service Commission is making significant

[1] *Initial Comments of the Competitive Retail Suppliers*, DTE 02-40 Investigation into the Provision of Default Service, August 9, 2002

progress in solving some of the very problems the Department has struggled with during the transition period. The New York PSC's progress also shows that there are effective solutions readily available to the Massachusetts DTE, if it is willing to implement them. Extensive information and policy guidance on these potential solutions to the flaws in the Massachusetts small customer market are available in the New York PSC's Competitive Markets case (00-M-0504). Some of these measures are even in the process of being implemented by an affiliate of the largest Massachusetts utility, as described in Massachusetts Electric's initial comments:

> Mass. Electric believes that further consideration should be given to developing competitive market programs which would address the remaining issues. Such programs may include state-wide procurements and could build upon some of the innovative ideas recently filed with the New York Public Services Commission by Mass. Electric's affiliate Niagara Mohawk.[2] (MECO Initial Comments at 11)

Direct Energy agrees wholeheartedly with Massachusetts Electric's comments in this regard. The New York experience shows that when a public utility commission acts assertively and creatively, it can create a framework that allows competition to thrive. When that framework exists, competitive supply options increase, and even small customers can begin to see the benefits of competitive markets. The residential and small business customers in Massachusetts should not lose out both to their counterparts in New York and to larger customers in Massachusetts. Direct Energy strongly urges the Department to consider, and implement to the full extent of its authority, retail choice

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[2] Competitive Opportunities Development Plan filed by Niagara Mohawk on December 21, 2004 in response to New York Public Service Commissions Order: Statement of Policy on Further Steps Toward Competition in Retail Energy Markets, issued on August 25, 2004 in case No. 00-M-0504

programs such as those that have already been examined thoroughly and are in the process of being implemented in New York.

We thank the Department for the opportunity to participate in this important discourse on the future of electric retail service in the Commonwealth.

Respectfully submitted,

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